IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

Crl.MC.No. 1865 of 2007()

AGAINST THE ORDER DATED 31/05/2007 IN CRMP.1718/07 IN CC.612/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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PETITIONER: ACCUSED:

C.P. RAMESH,
M/S. CRAFTEX, DOOR NO.VI/174 A, SYNAGOGUE LANE,
JEW TOWN, KOCHI-682 002.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS: COMPLAINANT & STATE:

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1. P.K. RAJAPPAN PILLAI,
THUSHARA, POOCHACKAL P.O., CHERTHALA.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1865 of 2007

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Dated this the 11th day of June, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. The case is at the defence stage. The notice of demand was admittedly not replied to. The signatures and the writings in the cheque do appear to be disputed. It is now submitted that when PW1 was in the witness box all necessary questions were not put to that witness. Later the wife of PW1was examined as DW1. She was cross examined. After her cross examination was over the petitioner filed Annex.I application to recall PW1 for further cross examination. The same was opposed by Annex.II application. The learned Magistrate, by the impugned order, rejected the prayer for re-calling the witness on the ground that there was no reason in this old matter (proceedings initiated in 2004) to justify such recalling of the witness. It was in these circumstances that the learned Magistrate proceeded to pass the impugned order.

2. The learned counsel for the petitioner submits that the petitioner had to wait till the examination of DW1 to take a decision whether PW1 must be confronted with certain facts. Only when DW1 was cross examined he could make up his mind to embark on a cross examination of PW1 on those aspects. Less said about the reasons urged, the better. I am not satisfied that there are sufficient reasons to justify recalling of PW1. The learned counsel for the petitioner submits that interests of justice will be served better if such a further opportunity is granted to recall PW1 even if it be on appropriate terms.

3. Taking all the relevant circumstances into account, I am satisfied that one further opportunity can be granted to the petitioner to put further questions in PW1 in further examination. The petitioner shall be put to strict terms.

4. In the nature of the order which I propose to grant, it is unnecessary to wait for issue and return of notice to the respondent/ complainant. Such course would lead to further protraction of the proceedings.

5. This Crl.M.C. is accordingly allowed. The petitioner shall be permitted to recall PW1 and further cross examine PW1 on condition that

the petitioner deposits an amount of Rs.750/- before the court below within a period of 7 days from this date i.e. on or before 18.6.2007. Every endeavour must be made to finally dispose of the case within a period of 45 days.

(R. BASANT)
Judge

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